

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

320 W. 4th Street, Suite 200
Los Angeles, California 90013
(213) 576-6600

ACLC No. R4-2009-0017

INTERIM ORDER

**IN RE: ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2009-0017
(AGAINST THE KISSEL COMPANY, INC.)**

On June 5, 2009, a hearing was held in the above-referenced matter before the California Regional Water Quality Control Board, Los Angeles Region (Regional Board), with Mary Ann Lutz, Chair, presiding. The Parties were represented as follows: The Prosecution Team was represented by Staff Counsel Jennifer L. Fordyce and Senior Staff Counsel Jeffrey Ogata. The Kissel Company was represented by Garrett L. Hanken, Esq., of Greenberg Glusker Fields Claman & Machtinger LLP, who appeared with Steven Dahlberg, Chief Executive Officer of The Kissel Company.

The matter was submitted subject to ruling on the admissibility of exhibits 27, 31, 46, 48, and 52. The Parties stipulated to the admissibility of exhibit 95, and it will be received. The Regional Board hereby admits these exhibits into evidence. The authenticity of the photographs was established by admissions by The Kissel Company, and witness testimony about the accuracy of the photographs as compared to their contemporaneous observations, with the exception of several of the photographs in exhibit 52, which, following this ruling, are admitted by stipulation. The email communications contained in the exhibits are business records of the Regional Board, the nature and use of which are routinely used in the regular course of this agency's business.

Upon consideration of the admissible evidence and arguments presented, the Regional Board hereby finds as follows:

I. Violations of Waste Discharge Requirements Order No. R4-2002-0108 (WDRs):

- A. Sewage Discharge Violations:** The Kissel Company violated the WDRs on three occasions by discharging sewage and partially treated sewage from Paradise Cove's treatment collection systems on April 30, 2007, May 1, 2007, and July 20, 2007, in violation of, among other provisions, General Provision D.14, on page 3 of the WDRs. These discharges discharged to Ramirez Creek and No-Name Creek, which are waters of the state. Accordingly liability is appropriate pursuant to Water Code section 13350(a)(2), in an amount not to exceed \$5,000 for each day of the violation, as described in subdivision (e)(1), for a combined maximum potential penalty of \$15,000.
- B. Reporting Violations:** The Kissel Company violated the Monitoring and Reporting Program (No. CI-8342), which is incorporated into the WDRs at page 9, Provision E.10, by failing to file monitoring reports for MW-4 for seven

constituents each on two occasions. These violations are more particularly described in Attachment A, hereto. As noted at page 8, Provision E.1., the monitoring requirements of the WDRs are imposed pursuant to Water Code section 13267. While not plead in the ACLC, liability for violations of the MRP is appropriate and has been established pursuant to Water Code section 13268, liability for which may be imposed in an amount not to exceed \$1,000 for each day of each violation, for a combined maximum possible penalty of \$14,000. If liability is appropriate under Water Code section 13350, the maximum potential penalty would be \$70,000, which represents a possible \$5,000 per day of violation.

II. Violations of Cleanup and Abatement Order No. R4-2007-0043 (CAO):

- A. The Kissel Company violated the CAO by discharging untreated and partially treated sewage on 12 occasions, including those described in Attachment B, hereto, except the alleged violations on September 21, and September 22, 2007, for which the Board finds lacks adequate evidence. The discharge of waste in violation of a cleanup and abatement order gives rise to liability pursuant to Water Code section 13350(a)(1), in an amount not to exceed \$5,000 for each day of the violation, as described in subdivision (e)(1), for a combined maximum potential penalty of \$60,000.

III. Violations of Amended Time Schedule Order No. R4-2006-0073 (Amended TSO):

- A. The Kissel Company violated the Amended TSO, by failing to timely comply with the requirements of Items A, B, and C, for 284, 237, and 642 days respectively. When the Amended TSO was adopted, the Regional Board purported to prescribe penalties pursuant to Water Code section 13308, in the sum of \$3,000 per day of noncompliance, to ensure compliance with the schedule. The Prosecution Team has opined that those penalty provisions are improper, as an order pursuant to Water Code section 13308 requires a determination that there is a threatened or continuing violation of a cleanup and abatement order, a cease and desist order, or an order pursuant to either section 13267 or 13383. The record shows that the draft Amended TSO was originally proposed as a time schedule order pursuant to Water Code section 13300, but at the hearing, the Regional Board added the provisions pursuant to section 13308.
- B. The Regional Board agrees with the Prosecution Team, and finds that the penalties specified in the Amended TSO are unenforceable, as there was no determination that there was a threatened or continuing violation of an order pursuant to either Water Code section 13301, 13304, 13267, or 13383 when it was adopted. The remainder of the Amended TSO is a valid and enforceable order pursuant to Water Code section 13300.
- C. While a time schedule order pursuant to either Water Code section 13300 or 13308 is an "order" as described in Water Code section 13350(a)(2), the Regional Board has received conflicting arguments, without substantial legal authority, as to whether the violation of the order must result from a discharge of waste to waters of the state, or the violation of the order itself gives rise to liability.

D. The Parties are directed file an additional brief, not to exceed 10 pages per side, addressing the following issues:

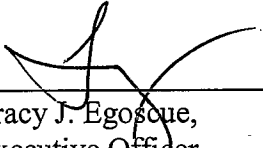
1. Whether Water Code section 13350(a)(2) liability requires that the violation of the relevant order result from a discharge of waste to waters of the state; and
2. Whether and under what circumstances the ACLC may be amended to conform to proof, so it alleges the reporting violations pursuant to Water Code section 13268 instead of 13350.

E. The briefs described in section D, above, shall be filed not later than 90 days of today.

IV. This matter will be continued until the first regularly scheduled board meeting after December 1, 2009.

V. This order is an interim order, is not final, and therefore is not subject to petition pursuant to Water Code section 13320. All findings related to disposition of this matter will be included in the final order when it is issued.

I, Tracy J. Egoscue, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order issued by the California Regional Water Quality Control Board, Los Angeles Region, following the public hearing on June 5, 2009.



Tracy J. Egoscue,
Executive Officer

Table 1

Complaint Order No. R4-2009-0017

The Kissel Company, Inc.
Paradise Cove Mobile Home Park
CI 8342

Reporting Violations

Date	Monitoring Period	Monitoring Well	Parameter	Required Frequency	Number of Violations
3/31/2003	1 st Quarter 2003	MW-4	pH	Quarterly	1
3/31/2003	1 st Quarter 2003	MW-4	Total and fecal coliform	Quarterly	1
3/31/2003	1 st Quarter 2003	MW-4	Enterococcus	Quarterly	1
3/31/2003	1 st Quarter 2003	MW-4	Nitrate-nitrogen	Quarterly	1
3/31/2003	1 st Quarter 2003	MW-4	Nitrite-nitrogen	Quarterly	1
3/31/2003	1 st Quarter 2003	MW-4	Total Nitrogen	Quarterly	1
3/31/2003	1 st Quarter 2003	MW-4	Total Dissolved Solids	Quarterly	1
3/31/2006	1 st Quarter 2006	MW-4	pH	Quarterly	1
3/31/2006	1 st Quarter 2006	MW-4	Total and fecal coliform	Quarterly	1
3/31/2006	1 st Quarter 2006	MW-4	Enterococcus	Quarterly	1
3/31/2006	1 st Quarter 2006	MW-4	Nitrate-nitrogen	Quarterly	1
3/31/2006	1 st Quarter 2006	MW-4	Nitrite-nitrogen	Quarterly	1
3/31/2006	1 st Quarter 2006	MW-4	Total Nitrogen	Quarterly	1
3/31/2006	1 st Quarter 2006	MW-4	Total Dissolved Solids	Quarterly	1
					TOTAL

Attachment A

Violation Summary for
The Kissel Company, Inc.
Paradise Cove Mobile Home Park
CI 8342

Date	Type of Spill	Volume of Spill	Number of Days in Violation	Water Code Section 13350
04/30/2007	Sewage Spill	200 gallons	1	(e)(2)
05/01/2007	Sewage Spill	200 gallons	1	(e)(2)
07/20/2007	Sewage Spill	100-150 gallons	1	(e)(2)
09/10/2007	Sewage Spill	500 gallons	1	(e)(1)
09/13/2007	Sewage Spill	500 gallons	1	(e)(1)
09/18/2007	Sewage Spill	5-10 gallons	1	(e)(1)
09/21/2007	Sewage Spill	unknown	1	(e)(1)
09/22/2007	Sewage Spill	unknown	1	(e)(1)
10/07/2007	Sewage Spill	50 gallons	1	(e)(1)
11/19/2007	Sewage Spill	10 gallons	1	(e)(1)
03/03/2008	Sewage Spill	unknown	1	(e)(1)
04/04/2008	Sewage Spill	5 gallons	1	(e)(1)
04/25/2008	Sewage Spill	5 gallons	1	(e)(1)
04/29/2008	Sewage Spill	250-300	1	(e)(1)
05/14/2008	Sewage Spill	125	1	(e)(1)
07/19/2008	Sewage Spill	unknown	1	(e)(1)
07/25/2008	Sewage Spill	unknown	1	(e)(1)
				Total

Attachment B